

Pdp

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1928 OF 2017

Nagesh Bhimasha Koli

.. Petitioner

Versus

**Secretary, Law and Judiciary
& Ors.**

.. Respondents

Mr. Sachinkumar P. Rajepandhare for petitioner.
Mrs. R. A. Salunkhe, AGP for respondent nos.1 to 5.
Mr. Rajesh S. Datar for respondent no.2.

**CORAM: S. V. GANGAPURWALA, ACTING CJ. &
SANDEEP V. MARNE, J.**

DATE: MARCH 3, 2023

P.C.: (PER-ACTING CHIEF JUSTICE)

1. Rule.

Rule is made returnable forthwith. By consent of the parties taken up for final disposal.

2. The petitioner was initially employed as Junior Clerk on the establishment of District Court, Nashik on or about 22nd May, 2000. The petitioner on or about 19th August, 2004 sought inter district transfer from District Court Nashik to District Court, Solapur. On or about 18th March, 2005 the petitioner was transferred from judicial District of Nashik to judicial District of Solapur. On or about 6th June, 2005 because of the retrenchment of staff on account of disbandment of the court, the petitioner's break-in-service took place. On 6th May, 2006 the petitioner was reappointed. The petitioner is not considered for the old pension scheme on

the ground that the petitioner is reappointed on 5th June, 2006 and such would govern by Defined Contribution Pension Scheme 2005 (DCPS).

3. Heard Mr. Rajepandhare, learned counsel for the petitioner, Mrs. Salunkhe, learned AGP for respondent Nos.1 to 5-State and Mr. Datar, learned counsel for respondent No.2.

4. It appears that upon hearing learned counsel for the respective parties, the undisputed facts emerge as under: -

- (i) The petitioner was appointed as a junior clerk in the year 2000 in the Court of 3rd Joint Civil Judge (Senior Division) Nashik.
- (ii) The petitioner sought inter district transfer to Solapur on 18th March, 2005. The petitioner was transferred to judicial District of Solapur.
- (iii) However, the Court at Solapur where the petitioner was transferred subsequently disband on or about 6th June, 2005.
- (iv) Thereafter on 5th June, 2006 the Petitioner was reappointed/absorbed on the post of junior clerk.
- (v) Because of the Court being disbanded there was break-in-service for a period of 6th June, 2005 to 4th June, 2006.
- (vi) The break-in-service has been condoned under Rule 48(1) of Maharashtra Civil Services (Pension) Rules 1982.

5. Appointment of the petitioner in the year 2000 was on a substantive post and was not an ad-hoc appointment. The petitioner acquired deemed permanency prior to 18th March

2005. The break in service because the Court being disbanded was condoned. The service of the petitioner is deemed to have been counted for all purposes since the initial date of appointment.

6. Even as per the affidavit of respondent No.2, the petitioner had acquired the permanency status w.e.f. 5th June, 2003.

7. It appears that while passing the impugned order dated 17th August, 2016, the order passed by the Principal District Judge, Solapur dated 1st July, 2016 was not brought to the notice of the authority. Under order dated 1st July, 2016, the learned Principal District Judge, Solapur has granted permanency with effect from 5th June, 2003. The break in service has already been condoned under order dated 25th February, 2007 referring to Rule 48 of the Maharashtra Civil Service (Pension) Rules, 1982.

7. In light of the aforesaid discussion, the impugned order so also the communication dated 10th August, 2016 issued by the State Government cannot be sustained. The petitioner would be governed by the old pension scheme.

8. The petitioner's service shall be counted for all purposes since the initial date of appointment viz. 22nd May, 2000. The further benefits be accorded to the petitioner accordingly.

9. Rule is accordingly made absolute. No costs.

PRAVIN
DASHARATH
PANDIT

Digitally signed by
PRAVIN DASHARATH
PANDIT
Date: 2023.03.04
14:03:06 +0530

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)